

IN THE SENATE

SENATE JOINT MEMORIAL NO. 105

BY STATE AFFAIRS COMMITTEE

A JOINT MEMORIAL

TO THE PRESIDENT OF THE UNITED STATES, THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES.

We, your Memorialists, the Senate and the House of Representatives of the State of Idaho assembled in the Second Regular Session of the Sixtieth Idaho Legislature, do hereby respectfully represent that:

WHEREAS, the federal Equal Access to Justice Act (EAJA), as enacted in 1980, together with other attorney fee shifting statutes, were enacted to restrain overzealous regulators and reimburse parties subjected to unreasonable government action by providing equal access to courts. These federal statutes were designed to reimburse attorney's fees so that a party that otherwise would not be able to afford litigation against the government, could have an opportunity to recover attorney's fees if the federal government's litigation position was not substantially justified; and

WHEREAS, certain nonprofit environmental groups have abused the original intent of many of these fee shifting statutes, finding procedural flaws in agency actions, suing the government and receiving millions of federal taxpayer dollars in attorney's fees for settling or winning such cases. Receipt of fees in this manner allows groups to continue litigation against the government. Ranchers and those who are the subject of these lawsuits must pay their own attorney's fees in order to intervene and participate in litigation. The Equal Access to Justice Act is also inequitable in that it permits any nonprofit to receive reimbursement regardless of its net worth, while limiting for-profit reimbursement to only those entities with a net worth of less than \$7 million; and

WHEREAS, the Equal Access to Justice Act provides that the Chairman of the Administrative Conference of the United States shall report annually to Congress as to the amount of fees and other expenses awarded during the preceding fiscal year, along with the number, nature and amount of awards, claims involved in controversy and any other relevant information which might aid Congress in evaluating the scope and impact of awards. In 1995, however, the Conference was no longer funded. Although reauthorized in 2008, the Conference remains without a chairman and staff. The lack of reporting has acted to eliminate the transparency of the program which is vital to maintaining public trust in taxpayer expenditures as well as assuring that taxpayer funds are properly expended; and

WHEREAS, the United States economy is in severe distress with the federal government exceeding over \$1 trillion in deficit spending in the previous fiscal year. Congress needs to look closely at every expenditure of taxpayer dollars before it is spent and scrutinize expenditures to ensure they are necessary and constitutional.

1 NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Ses-
2 sion of the Sixtieth Idaho Legislature, the Senate and the House of Represen-
3 tatives concurring therein, that the State of Idaho hereby urges the Presi-
4 dent of the United States and the United States Congress to undertake an im-
5 mediate and thorough review of federal expenditures under the Equal Access
6 to Justice Act and other fee shifting statutes.

7 BE IT FURTHER RESOLVED that the Idaho Legislature strongly supports
8 the passage of federal legislation that restores the mandatory reporting
9 requirements under the Equal Access to Justice Act, and other federal fee
10 shifting statutes, and makes all data associated with federal awards under
11 the Act publicly available, including the name and location of recipients of
12 awards, the lawsuit for which the awards were made, the amount of attorney's
13 fees paid and the per hour rate in which they were calculated and the names of
14 the attorneys who were compensated.

15 BE IT FURTHER RESOLVED that the Idaho Legislature requests the relevant
16 committees of Congress conduct thorough oversight hearings on the use and/or
17 abuse of Equal Access to Justice Act and other fee shifting statutes, and
18 hear testimony about potential reforms to the Act that would make it more
19 transparent, equitable and accountable to the taxpayers that fund it.

20 BE IT FURTHER RESOLVED that the Secretary of the Senate be, and she is
21 hereby authorized and directed to forward a copy of this Memorial to the
22 President of the United States, the President of the Senate and the Speaker
23 of the House of Representatives of Congress, and the congressional delega-
24 tion representing the State of Idaho in the Congress of the United States.